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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,260	12/09/2003	Toshifumi Otsubo	2038-310	3334

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LOWE HAUPTMAN GILMAN & BERNER, LLP
Suite 300
1700 Diagonal Road
Alexandria, VA 22314

EXAMINER

HAND, MELANIE JO

ART UNIT PAPER NUMBER

3761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/16/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/730,260	Applicant(s) OTSUBO, TOSHIFUMI	
	Examiner Melanie J. Hand	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 28 November 2006.
- 2a) This action is **FINAL**.
- 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-20 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 - 1. Certified copies of the priority documents have been received.
 - 2. Certified copies of the priority documents have been received in Application No. _____.
 - 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) Notice of Informal Patent Application
- 6) Other: _____

DETAILED ACTION

Response to Arguments

Applicant's arguments filed November 28, 2006 have been fully considered but they are not persuasive.

With respect to applicant's arguments regarding the prior art of Olson: Applicant argues with respect to claims 1 and 13 that Examiner has not specified whether the motivation to modify the prior art of Olson to have elastic strands attached only at the side edges of the waist region is found in Olson or is knowledge generally available in the art (claim 1), or that the middle portion is directly bonded to neither of the topsheet or backsheets taught by Olson (claim 13). The knowledge is generally available in the art, and so at applicant's request, the following prior art references of good date are provided herein: U.S. Patent No. 6,478,785 to Ashton teaches that "balloon pants" in which elastic elements are secured to the waist opening in a contracted state and thus create zones where the material is contracted while the remaining material blouses. Examiner interprets this teaching, along with that of Olson, as encompassing an embodiment in which strands are attached only at the side edges. To further support this argument, Examiner also cites U.S. Patent Application Publication No. 2001/0047160 to Klemm and U.S. Patent No. 6,746,436 to Sierrri et al which teach, in addition to the aforementioned Ashton patent, that side panels or zones having elasticity, often imparted by elastic strands, are also well known in the art where there is no other elasticity imparted to an article chassis other than additional leg elastics.

Applicant argues with respect to claim 5 that Olson does not teach elastics that are equal in length to the width of the absorbent core in a contracted state. Examiner refers applicant back to the rejection of claim 5 in which the absorbent core width relation to the

contracted state of the elastic is in fact addressed. Examiner also refers applicant to Fig. 3 taught by Olson in which it is clear that the contracted length of elastics 80 is equal to the width of the absorbent core.

Applicant further argues with respect to claim 19 that Olson does not teach that auxiliary elastic members are disposed between said elasticized waist hole and said elasticized leg holes, rather that Olson teaches simulated elastic bands. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., that the elastic members be of a specific type) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). By teaching bands of material which exhibit elastic behavior, Olson is teaching auxiliary elastic members between the waist hole and leg holes.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

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2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Olson et al (U.S. Patent No. 6,297,424).

With respect to **Claim 1**: Olson teaches training pant 20 having longitudinal and lateral dimensions, first and second waist regions 22 and 24, respectively, crotch region 26, elasticized waist opening 50, and leg openings 52 comprised of a plurality of elastic strands, chassis 32, and absorbent assembly 44. The elastic strands have opposing end portions and middle portions and are secured to the outer cover 40. (Col. 11, lines 13-20, 43-45, 62-67, Col. 12, lines 2-6)

Olson does not explicitly teach a particular location on the outer cover to which the elastic strands are attached, therefore it would be obvious to one of ordinary skill in the art to attach the strands at the transversely opposite side edges as the only points of attachment, thereby leaving the middle portions of said strands free of direct securement to the chassis, as such an attachment would provide more freedom of movement of the chassis in the stomach region and therefore more freedom of movement in that region for the user.

With respect to **Claim 2**: Olson teaches bodyside liner 42 and outer cover 40 that are joined together by any means known in the art, which would produce joining sites. (Col. 14, lines 32-34)

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With respect to **Claims 3,4,7,8,14,15**: Outer cover 40 (chassis outer sheet) and bodyside liner 42 (chassis inner sheet) are joined together outside of the periphery of the absorbent assembly 44 at a plurality of joining sites present in the front, waist and side regions. (Col. 14, lines 32-35)

With respect to **Claim 5**: Please see the rejection of claim 1 in addition to the following: The elastic members 80 extend between the side edges, and in a contracted state, which is the state depicted in Fig. 3 of Olson, their length is equal to that of either of the front or waist regions, which is equal to the analogous waist-direction length of the absorbent structure.

With respect to **Claim 6**: Olson teaches graphics 70 disposed opposite the absorbent assembly in the front waist region. (Col. 13, lines 14-20)

With respect to **Claim 9**: Front waist region 22 and rear waist region 24 are joined together by side seams 46. (Col. 11, lines 34-36)

With respect to **Claim 10**: Olson teaches containment flaps. (Col. 11, lines 62-67; Col. 12, lines 2-4)

With respect to **Claim 11**: Olson teaches that the elastic strands can be adhered to a substrate and then shrunk therefore they are attached in an unstretched state. Since these strands must occupy substantially the entire length of the waist opening to perform their function, their length in the waist-surrounding direction is generally equal to the analogous length of the absorbent core in the same direction.

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With respect to **Claim 12**: Olson does not teach a particular length by which the length of the waist elastic strands exceeds the length of the absorbent core, both lengths in the waist-surrounding direction. However, the length is necessarily at least 1 mm as can clearly be seen from Figs. 1-6. It would be obvious to one of ordinary skill in the art to modify the difference in lengths so as to fall in the range set forth in claim 12. This range of values represents an optimization as applicant has not assigned sufficient criticality to this range of values.

With respect to **Claim 13**: Olson teaches that the elastic strands can be joined to the outer cover and bodyside liner, therefore they would be positioned therebetween. Since the strands are continuous, the middle portions of each strand connect the opposite end portions of the same strand, and the continuous strands extend across an entire width of said absorbent structure in the waist surrounding direction from one of transversely opposite side edges of said structure to the other. Since the elastic strands can be bonded to the outer cover in such a manner as to remain free of direct securement to the chassis, such a manner of bonding would also result in the elastic strands being directly bonded neither to the bodyside liner nor the outer cover in an entire section of the middle portion located between the transversely opposite side edges.

With respect to **Claim 16**: The bonding sites at the side edges bonding the outer cover to the bodyside liner and attaching the elastic strands to the chassis necessarily limit displacement of the middle portions of said strands in the longitudinal direction without affecting the contractibility of said middle portions in the waist-surrounding direction, since the middle portions are still free of direct attachment to the chassis and thus can expand and contract normally.

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With respect to **Claim 17,20**: Olson does not explicitly teach a particular location on the outer cover to which the elastic strands are attached, therefore it would be obvious to one of ordinary skill in the art to attach the strands at the transversely opposite side edges as the only points of attachment, thereby leaving the middle portions of said strands free of direct securement to the chassis, as such an attachment would provide more freedom of movement of the chassis in the stomach region and therefore more freedom of movement in that region for the user. With respect to claim 20, since the area of the chassis underlying the absorbent assembly is free of attachment to the strands, the region will also be free of gathers as the strands are pulled taut and attached at their transversely opposite edge portions while the middle portions, i.e. the portions of strands that underlie the absorbent assembly, will remain free of attachment to the chassis and thus cannot cause gathers in said area.

With respect to **Claim 18**: Olson teaches that the strands underlie and extend across the picture on the front of cover 40. The strands are attached at opposite end portions of the elastic members as is suggested by Olson, therefore the strands will not cause gathers to be formed in the picture area of the chassis as the strands will be pulled taut at the transversely opposite end portion where they are attached to the chassis and thus will prevent the picture from being distorted.

With respect to **Claim 19**: As can be seen in Fig. 1, the elastic strands are disposed between, and spaced in the longitudinal direction from, said elasticized waist opening and said elasticized leg openings.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie J Hand
Examiner
Art Unit 3761

February 12, 2007

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

